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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO,
individually and on behalf of all similarly
situated,

Plaintiffs,

v.

GOOGLE LLC,
Defendant.

Case No. 5:20-cv-03664-LHK-SVK

**GOOGLE LLC'S ADMINISTRATIVE
MOTION TO SEAL PORTIONS OF
GOOGLE LLC'S SUBMISSION IN
RESPONSE TO NOVEMBER 12 ORDER
ADOPTING IN PART AND MODIFYING
IN PART THE SPECIAL MASTER'S
REPORT AND ORDERS ON REFERRED
DISCOVERY ISSUES DKT. 331, 336**

Referral: Hon. Susan van Keulen, USMJ

I. INTRODUCTION

Pursuant to Civil Local Rules 7-11 and 79-5, Defendant Google LLC (“Google”) respectfully seeks to seal certain portions of Google’s Submission in Response to November 12 Order Adopting in Part and Modifying in Part the Special Master’s Report and Orders on Referred Discovery Issues Dkt. 331, 336 (“Special Master Submission”), which consists of Golueke Declaration, Exhibit A, Exhibit B, and these documents contain non-public, highly sensitive and confidential business information that could affect Google’s competitive standing and may expose Google to increased security risks if publicly disclosed, including the various types of data sources which include information related to Google’s data logs, internal data structures, internal identifiers and their proprietary functions. This information is highly confidential and should be protected. The Court previously granted Google’s motions to seal the same or substantively similar information it seeks to seal now, including in Dkt. Nos. 143, 152, 160, 172, 174, 183, 190, 197, 226, 238, 240, 276, 285, 286, 306, 320.

Exhibit B Golueke Declaration in support of the Special Master Submission also contains or reflects material that would ordinarily be designated “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” by Plaintiffs.

This Administrative Motion pertains for the following information contained in the Special Master Submission:

Document	Portions to be Filed Under Seal	Party Claiming Confidentiality
Exhibit A to Golueke Declaration in support of the Special Master Submission	Redacted in its entirety	Google
Exhibit B to Golueke Declaration in support of the Special Master Submission	Portions Highlighted in Yellow at: Pages 3, 6, 7, 8, 10, 11, 13, 14, 17, 18, 19, 20	Google
Exhibit B to Golueke Declaration in support of the Special Master Submission	Portions Highlighted in Blue at: Pages 1-20	Plaintiffs

II. LEGAL STANDARD

A party seeking to seal material must “establish[] that the document, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the law” (*i.e.*, is “sealable”). Civ. L.R. 79-5(b). The sealing request must also “be narrowly tailored to seek sealing only of sealable material.” *Id.*

In the context of dispositive motions, materials may be sealed in the Ninth Circuit upon a showing that there are “compelling reasons” to seal the information. *See Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1179-80 (9th Cir. 2006). However, a party seeking to seal information in a non-dispositive motion must show only “good cause.” *Id.* at 1179-80. The rationale for the lower standard with respect to non-dispositive motions is that “the public has less of a need for access to court records attached only to non-dispositive motions because these documents are often unrelated, or only tangentially related, to the underlying cause of action” and that as a result “[t]he public policies that support the right of access to dispositive motions, and related materials, do not apply with equal force to non-dispositive materials.” *Kamakana*, 447 F.3d at 1179; *see also TVIIM, LLC v. McAfee, Inc.*, 2015 WL 5116721, at *1 (N.D. Cal. Aug. 28, 2015) (“Records attached to non-dispositive motions are not subject to the strong presumption of access.”) (citation omitted). Under the “good cause” standard, courts will seal statements reporting on a company’s users, sales, investments, or other information that is ordinarily kept secret for competitive purposes. *See Hanginout, Inc. v. Google, Inc.*, 2014 WL 1234499, at *1 (S.D. Cal. Mar. 24, 2014); *Nitride Semiconductors Co. v. RayVio Corp.*, 2018 WL 10701873, at *1 (N.D. Cal. Aug. 1, 2018) (granting motion to seal “[c]onfidential and proprietary information regarding [Defendant]’s products” under “good cause” standard) (van Keulen, J.). Although the materials that Google seeks to seal here easily meet the higher “compelling reasons” standard, the Court need only consider whether these materials meet the lower “good cause” standard.

III. THE ABOVE IDENTIFIED MATERIALS SHOULD ALL BE SEALED

Courts have repeatedly found it appropriate to seal documents that contain “business information that might harm a litigant’s competitive standing.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 589-99 (1978). Good cause to seal is shown when a party seeks to seal materials that

1 “contain[] confidential information about the operation of [the party’s] products and that public
 2 disclosure could harm [the party] by disclosing confidential technical information.” *Digital Reg of*
 3 *Texas, LLC v. Adobe Sys., Inc.*, 2014 WL 6986068, at *1 (N.D. Cal. Dec. 10, 2014). Materials that
 4 could harm a litigant’s competitive standing may be sealed even under the “compelling reasons”
 5 standard. *See e.g., Icon-IP Pty Ltd. v. Specialized Bicycle Components, Inc.*, 2015 WL 984121, at *2
 6 (N.D. Cal. Mar. 4, 2015) (information “is appropriately sealable under the ‘compelling reasons’
 7 standard where that information could be used to the company’s competitive disadvantage”) (citation
 8 omitted). Courts in this district have also determined that motions to seal may be granted as to
 9 potential trade secrets. *See, e.g. United Tactical Sys., LLC v. Real Action Paintball, Inc.*, 2015 WL
 10 295584, at *3 (N.D. Cal. Jan. 21, 2015) (rejecting argument against sealing “that [the party] ha[s] not
 11 shown that the substance of the information . . . amounts to a trade secret”).

12 Here, the Special Master Submission comprises confidential and proprietary information
 13 regarding highly sensitive features of Google’s internal systems and operations that Google does not
 14 share publicly. Specifically, this information provides details related to the various types of data
 15 sources which include information related to Google’s data logs, internal data structures, internal
 16 identifiers and their proprietary functions. Such information reveals Google’s internal strategies,
 17 system designs, and business practices for operating and maintaining many of its important services
 18 while complying with its legal and privacy obligations.

19 Public disclosure of the above-listed information would harm Google’s competitive standing it
 20 has earned through years of innovation and careful deliberation, by revealing sensitive aspects of
 21 Google’s proprietary systems, strategies, and designs to Google’s competitors. That alone is a proper
 22 basis to seal such information. *See, e.g., Free Range Content, Inc. v. Google Inc.*, No. 14-cv-02329-
 23 BLF, Dkt. No. 192, at 3-9 (N.D. Cal. May 3, 2017) (granting Google’s motion to seal certain sensitive
 24 business information related to Google’s processes and policies to ensure the integrity and security of
 25 a different advertising system); *Huawei Techs., Co. v. Samsung Elecs. Co.*, No. 3:16-cv-02787-WHO,
 26 Dkt. No. 446, at 19 (N.D. Cal. Jan. 30, 2019) (sealing confidential sales data because “disclosure
 27 would harm their competitive standing by giving competitors insight they do not have”); *Trotsky v.*
 28

1 *Travelers Indem. Co.*, 2013 WL 12116153, at *8 (W.D. Wash. May 8, 2013) (granting motion to seal
2 as to “internal research results that disclose statistical coding that is not publically available”).

3 Moreover, if publicly disclosed, malicious actors may use such information to seek to
4 compromise Google’s data sources, including data logs, internal data structures, and internal identifier
5 systems. Google would be placed at an increased risk of cyber security threats. *See, e.g., In re*
6 *Google Inc. Gmail Litig.*, 2013 WL 5366963, at *3 (N.D. Cal. Sept. 25, 2013) (sealing “material
7 concern[ing] how users’ interactions with the Gmail system affects how messages are transmitted”
8 because if made public, it “could lead to a breach in the security of the Gmail system”). The security
9 threat is an additional reason for this Court to seal the identified information.

10 The information Google seeks to redact, including the various types of data sources which
11 include information related to Google’s data logs, internal data structures, internal identifiers and their
12 proprietary functions, is the minimal amount of information needed to protect its internal systems and
13 operations from being exposed to not only its competitors but also to nefarious actors who may
14 improperly seek access to and disrupt these systems and operations. The “good cause” rather than the
15 “compelling reasons” standard should apply but under either standard, Google’s sealing request is
16 warranted.

17 Further, Exhibit B to Golueke Declaration in support of the Special Master Submission
18 comprises information that contains, summarizes, or reflects material Plaintiffs would ordinarily
19 designate “Confidential” or “Highly Confidential – Attorneys’ Eyes Only.” Pursuant to Civil Local
20 Rule 79-5(e), Plaintiff, as the Designating Party, bears the responsibility to establish that their
21 designated material is sealable.

22 **IV. CONCLUSION**

23 For the foregoing reasons, the Court should seal the identified portions of the Special Master
24 Submission.

1 DATED: November 18, 2021

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